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BY ECF & FAX (212) 805-7927
Hon. Naomi Reice Buchwald, USDJ
United States District Court
Southern District of New York
500 Pearl Street
New York, NY 10007

Re: Courtnaye Charley v. Total Office Planning Services, Inc., United Brotherhood of Carpenters and Joiners of America, Local Union 157 and Joseph Oddo
SDNY No. 16-cv-08642 (NRB) (GWG)

Dear Judge Buchwald:

Undersigned counsel for defendant United Brotherhood of Carpenters and Joiners of America, Local Union 157 ("Local 157" or "Union") hereby requests a pre-motion conference for leave to move for judgment on the pleadings pursuant to Rule 12(c) of the Federal Rules of Civil Procedure ("FRCP") and this Court's Individual Motion Practice and Rules. On its face, Plaintiff's complaint fails as time barred and should be dismissed.

On or about October 18, 2016, Charley served a complaint (the "Complaint") on the Union filed in New York State Supreme Court, New York County September 23, 2016, alleging that the Union discriminated against her because of race, gender and because she is a lesbian, in violation of the New York State and City Human Rights Laws. The Union timely removed the action to this Court on November 7, 2016 on the grounds that Charley's claims were wholly preempted by federal labor law governing the Union's "duty of fair representation," Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185 and Sections 7,8(b) and 9(a) of the National Labor Relations Act, 29 U.S.C. §§ 7, 8(b) and 9(a). The Union timely filed its Answer on November 28, 2016, denying the allegations of discrimination and asserting various affirmative defenses, including failure to state a claim (First), federal preemption (Second) and statute of limitations (Third).

The Union requests leave to move for judgment on the pleadings pursuant to FRCP 12(c) because state or local actions such as this one by Charley, in which an employee claims a union did not fairly represent her interests in the workplace because of a prohibited discriminatory factor, are wholly preempted and governed exclusively by federal labor law, and must be brought within six (6) months of when plaintiff knew or reasonably should have known of the alleged violation. *Morillo v. Grand Hyatt*, 2014 WL 3498663 (S.D.N.Y. July 10, 2014); *See also, Woldeselassie v. American Eagle Airlines,* 2015 WL 456679 *10, n.4 (SDN.Y. Feb 2, 2015).

Here, the Complaint inadequately alleges that the Union somehow permitted defendant Total Office Planning Services, Inc. ("TOPS") and a co-worker to harass Charley because of her race, gender and sexual preference until her last day of employment, from July 20 – 30, 2013, despite her alleged repeated complaints to that co-worker during that ten day period. Inasmuch as Charley alleges actual knowledge of the Union's purported breach in mid 2013, the Complaint comes well over three years, let alone six months, after the very last day Plaintiff knew or should have known of the violation. Accordingly, the Complaint should be dismissed as time barred.

Moreover, Plaintiff does not bring her belated action in a vacuum. As this Court knows, Charley previously sued the Union upon the same operative facts on January 8, 2014, in Case No. 1:14-cv-0085 (NRB). Plaintiff then filed an Amended Complaint on April 22, 2014 solely against TOPS and "John Doe," alleging the same violations but deleting the Union as defendant. This Court granted TOPS' motion for summary judgment on the federal 42 U.S.C. § 1981 claim by Memorandum and Order dated August 23, 2016, dismissing claims for the alleged 2013 discrimination under the New York State and New York City Human Rights Laws without prejudice. Disappointed with her strategy and its consequences, Charley then brought this current action.

Under well settled precedent, Plaintiff's latest stratagem comes far too late. LMRA Section 301 and NLRA Sections 7-9 preclude Plaintiff from attempting to pressure the Union into settlement or prolonged litigation, expending members' dues on a meritless claim long after the alleged events. The Union therefore requests leave to move for judgment on the pleadings dismissing the Complaint.

Thank you for your consideration.

Respectfully yours,

Barry N. Saltzman

cc: Hon. Gabriel W. Gorenstein, USMJ (By Fax 212-805-4268)
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